S T A T E O F N E W Y O R K

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2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. GANTT -- read once and referred to the Committee on Transportation

AN ACT to amend the vehicle and traffic law, in relation to establishing an independent traffic violations bureau

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Title II of the vehicle and traffic law is amended by adding a new article 3-B to read as follows:

ARTICLE 3-B

TRAFFIC VIOLATIONS BUREAU

SECTION 280. STATEMENT OF PURPOSE.
281. DEFINITIONS.
282. TRAFFIC VIOLATIONS BUREAU; ORGANIZATION.
283. FUNCTIONS, POWERS AND DUTIES.
284. ADMINISTRATIVE ADJUDICATION OF TRAFFIC VIOLATIONS.

S 280. STATEMENT OF PURPOSE. THIS ARTICLE IS ENACTED TO ESTABLISH A TRAFFIC VIOLATIONS BUREAU INDEPENDENT FROM THE DEPARTMENT OF MOTOR VEHICLES WHICH SHALL BE RESPONSIBLE FOR PROVIDING THE PUBLIC WITH A JUST SYSTEM OF ADJUDICATING SERIOUS TRAFFIC VIOLATIONS AND OTHER ADMINISTRATIVE PROCEEDINGS ARISING UNDER THE PROVISIONS OF THIS CHAPTER AND TO ENSURE THAT THE ELEMENTS OF DUE PROCESS ARE PRESENT WITH REGARD TO SUCH ADJUDICATIONS.

S 281. DEFINITIONS. AS USED IN THIS ARTICLE:

1. "OFFICE" SHALL MEAN THE TRAFFIC VIOLATIONS BUREAU AS CREATED IN SECTION TWO HUNDRED EIGHTY-TWO OF THIS ARTICLE.

2."DIRECTOR" SHALL MEAN THE DIRECTOR OF THE TRAFFIC VIOLATIONS BUREAU.

3. "ADJUDICATORY PROCEEDING" MEANS HEARINGS PURSUANT TO ARTICLE TWO-A OF THIS TITLE.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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4. "HEARING OFFICER" MEANS A PERSON APPOINTED BY THE DIRECTOR TO CONDUCT AND PRESIDE OVER CONTESTED ADJUDICATORY PROCEEDINGS IN ACCORDANCE WITH THIS ARTICLE.

S 282. TRAFFIC VIOLATIONS BUREAU; ORGANIZATION. 1. THERE SHALL BE A SEPARATE AND INDEPENDENT TRAFFIC VIOLATIONS BUREAU TO IMPLEMENT THE PROVISIONS OF ARTICLE TWO-A OF THIS TITLE AND TO BE OPERATED AND ADMINISTERED AS PROVIDED IN THIS ARTICLE CONSISTENT THEREWITH. THE POWERS, FUNCTIONS, DUTIES AND OBLIGATIONS OF THE OFFICE SHALL BE SEPARATE FROM AND INDEPENDENT OF THE AUTHORITY OF THE COMMISSIONER OF MOTOR VEHICLES.

2. THE HEAD OF THE OFFICE SHALL BE THE DIRECTOR OF THE TRAFFIC VIOLATIONS BUREAU WHO SHALL BE APPOINTED BY THE GOVERNOR, BY AND WITH THE ADVICE AND CONSENT OF THE SENATE, AND SHALL HOLD OFFICE UNTIL THE END OF THE TERM OF THE APPOINTING GOVERNOR AND UNTIL A QUALIFIED SUCCESSOR IS APPOINTED. THE DIRECTOR SHALL RECEIVE AN ANNUAL SALARY WITHIN THE AMOUNT APPROPRIATED THEREFOR. NO PERSON SHALL BE APPOINTED DIRECTOR UNLESS AT THE TIME OF HIS OR HER APPOINTMENT HE OR SHE IS KNOWLEDGEABLE ON THE SUBJECT OF ADMINISTRATIVE ADJUDICATION AND HAS BEEN ADMITTED TO PRACTICE AS AN ATTORNEY AT LAW IN THIS STATE FOR AT LEAST TEN YEARS. THE DIRECTOR SHALL HAVE THE IMMEDIATE CHARGE OF THE OFFICE. THE DIRECTOR MAY APPOINT, AND AT PLEASURE REMOVE, SUCH DEPUTY DIRECTORS, ADMINISTRATIVE LAW JUDGES, OTHER ASSISTANTS AND EMPLOYEES OF THE OFFICE AS ARE DEEMED NECESSARY. THE DIRECTOR AND ALL OTHER OFFICERS AND EMPLOYEES OF THE OFFICE SHALL BE PAID AND ALLOWED THEIR NECESSARY, ACTUAL AND REASONABLE EXPENSES INCURRED IN THE EXERCISE OF THEIR DUTIES. ALL SALARIES AND EXPENSES OF THE OFFICE SHALL BE PAID OUT OF THE STATE TREASURY ON THE AUDIT AND WARRANT OF THE COMPTROLLER ON THE CERTIFICATE OF THE OFFICE. THE PRINCIPAL OFFICE SHALL BE IN THE CITY OF ALBANY AND THERE SHALL BE ONE OR MORE OFFICES IN EACH JURISDICTION AS NECESSARY TO CARRY OUT THE PROVISIONS OF ARTICLE TWO-A OF THIS TITLE AND OTHER ADMINISTRATIVE ADJUDICATION RESPONSIBILITIES UNDER THIS CHAPTER.

S 283. FUNCTIONS, POWERS AND DUTIES. THE DIRECTOR SHALL HAVE THE FOLLOWING FUNCTIONS, POWERS AND DUTIES:

1. TO ESTABLISH, CONSOLIDATE, ALTER OR ABOLISH ANY DEPARTMENTS IN THE BUREAU AND TO APPOINT THE HEAD OF SUCH DEPARTMENTS AND FIX THEIR DUTIES;

2. SUBJECT TO THE CIVIL SERVICE LAW AND THE APPLICABLE COLLECTIVE BARGAINING AGREEMENTS, TO APPOINT, REMOVE OR TRANSFER DEPUTIES, OFFICERS, ASSISTANTS, HEARING OFFICERS, COUNSELS AND OTHER EMPLOYEES AS MAY BE NECESSARY FOR THE EXERCISE OF POWERS AND PERFORMANCE OF THE DUTIES OF THE BUREAU AND TO PRESCRIBE THEIR DUTIES, AND FIX THEIR COMPENSATION WITHIN THE AMOUNTS APPROPRIATED THEREFORE;

3. WHEN REGULARLY APPOINTED HEARING OFFICERS ARE NOT AVAILABLE, THE DIRECTOR, PURSUANT TO THE APPLICABLE COLLECTIVE BARGAINING AGREEMENTS, MAY CONTRACT WITH QUALIFIED INDIVIDUALS TO SERVE AS HEARING OFFICERS PROVIDED THAT TEMPORARY HEARING OFFICERS SHALL HAVE THE SAME QUALIFICATIONS FOR APPOINTMENT AS PERMANENT HEARING OFFICERS;

4. TO DEVELOP AND IMPLEMENT A PROGRAM OF EVALUATION TO AID THE DIRECTOR IN THE PERFORMANCE OF HIS OR HER DUTIES. THE DIRECTOR SHALL DEVELOP STANDARDS AND PROCEDURES WHICH SHALL INCLUDE TAKING COMMENTS FROM SELECTED LITIGANTS AND REPRESENTATIVES BEFORE A HEARING OFFICER; PROVIDED HOWEVER THAT THE DIRECTOR'S AUTHORITY PURSUANT TO THIS SUBDIVISION IS SUBJECT TO THE PROVISIONS OF THE CIVIL SERVICE LAW AND APPLICABLE COLLECTIVE BARGAINING AGREEMENTS;

5. TO THE EXTENT PERMITTED BY LAW, TO PUBLISH AND MAKE AVAILABLE TO THE PUBLIC ALL RECOMMENDED DECISIONS RENDERED BY A HEARING OFFICER;

6. TO ADOPT, PROMULGATE, AMEND AND RESCIND RULES AND REGULATIONS TO CARRY OUT THE PROVISIONS OF THIS ARTICLE. SUCH REGULATIONS SHALL SUPERSEDE ANY INCONSISTENT DEPARTMENT RULES; AND

7. TO SUBMIT TO THE GOVERNOR, THE TEMPORARY PRESIDENT AND MINORITY LEADER OF THE SENATE AND THE SPEAKER AND MINORITY LEADER OF THE ASSEMBLY AN EVALUATION OF THE EFFECTIVENESS OF THE BUREAU IN ATTAINING THE OBJECTIVES OF THIS ARTICLE PREPARED BY AN INDEPENDENT ENTITY. SUCH EVALUATION SHALL BE SUBMITTED BY NOVEMBER THIRTIETH OF THE SECOND YEAR FOLLOWING THE EFFECTIVE DATE OF THIS SECTION AND BY SEPTEMBER FIRST EVERY TWO YEARS THEREAFTER.

S 284. ADMINISTRATIVE ADJUDICATION OF TRAFFIC VIOLATIONS. THE BUREAU SHALL BE VESTED WITH EXCLUSIVE JURISDICTION OVER ALL CASES THAT MAY BE HEARD AND DETERMINED PURSUANT TO THE PROVISIONS OF SECTION TWO HUNDRED TWENTY-FIVE OF THIS TITLE.

S 2. Section 225 of the vehicle and traffic law, as amended by chapter 682 of the laws of 1970, subdivision 1 as amended by chapter 173 of the laws of 1990 and subdivision 2 as amended by chapter 196 of the laws of 1972, is amended to read as follows:

S 225. Jurisdiction; transfer of cases; hearing officers; regulations. 1. Notwithstanding any inconsistent provision of law, all violations of this chapter or of a law, ordinance, order, rule or regulation relating to traffic, except parking, standing, stopping or pedestrian offenses, which occur within a city having a population of two hundred thousand or more in which administrative tribunals have heretofore been established, or within that portion of Suffolk county for which a district court has been established, and which are classified as traffic infractions, may be heard and determined pursuant to the regulations of the [commissioner] DIRECTOR OF THE TRAFFIC VIOLATIONS BUREAU as provided in [this] article THREE-B OF THIS TITLE. Whenever a crime and a traffic infraction arise out of the same transaction or occurrence, a charge alleging both offenses may be made returnable before the court having jurisdiction over the crime. Nothing herein provided shall be construed to prevent a court, having jurisdiction over a criminal charge relating to traffic or a traffic infraction, from lawfully entering a judgment of conviction, whether or not based on a plea of guilty, for any offense classified as a traffic infraction.

2. Whenever [the commissioner or his deputy] THE DIRECTOR OF THE TRAFFIC VIOLATIONS BUREAU determines that a charge alleges an offense other than a traffic infraction, he OR SHE shall, and where a charge cannot be disposed of because of the non-appearance of the motorist, he OR SHE may notify the court of appropriate jurisdiction and request removal of the case to such court. Prior notice of such request need not be given the motorist involved. Upon receipt of such request, the court may grant an order transferring such case, provided that the date on which the charge or charges must be answered before the court shall not be earlier than the return date which appears on the complaint alleging the offense. Notice of transfer of cases involving other than traffic infractions shall be mailed to the motorist at the address appearing on such complaint not less than ten days before the date of appearance indicated on his OR HER summons and not less than fifteen days before his OR HER scheduled appearance in such court. Notice of transfer of cases which cannot be disposed of because of the non-appearance of the motorist shall be mailed to the motorist at the address appearing on such complaint not less than fifteen days before his OR HER scheduled appearance in such court. Such mailing shall constitute due notice of such

transfer. Thereafter, such case shall be treated in the same manner as if the complaint had initially been filed with such court.

3. The commissioner [shall appoint such hearing officers as shall be necessary to hear and determine cases as provided by this article and] may promulgate [such] regulations [as shall be necessary or desirable to effect the purposes of this article. Such regulations may] TO provide for a schedule of monetary penalties to be used where an answer is made, other than before a hearing officer, admitting a charge, provided that no such penalty shall exceed the maximum fine established by law for the traffic infraction involved.

S 3. Codification of changes. Within nine months of the effective date of this section, the commissioner of motor vehicles shall prepare and submit to the governor, the temporary president and minority leader of the senate, and the speaker and minority leader of the assembly a proposed codification of changes in law necessary and appropriate to carry out the purposes and provisions of article 3-B of the vehicle and traffic law as added by section one of this act. Such changes shall include provisions for transition of personnel and cases to the traffic violations bureau.

S 4. This act shall take effect on the first of January next succeeding the date on which it shall have become a law; except that section three of this act shall take effect immediately.